

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIE T. SMITH,

Plaintiff,

v.

DAWN JONES, *et al.*,

Defendants.

Case No. 3:20-cv-00504-MMD-CLB

ORDER

On March 14, 2022, U.S. Magistrate Judge Carla L. Baldwin denied Plaintiff Willie T. Smith's motion for appointment of counsel. (ECF Nos. 42 ("Motion"), 48 ("Order").) Judge Baldwin denied Smith's Motion because she found that exceptional circumstances do not exist in this case. (ECF No. 48 at 2.) In so finding, she reasoned that there is a single Eighth Amendment claim for deliberate indifference to serious medical needs asserted against a single defendant relating to a single incident. (*Id.*) Judge Baldwin further noted that Smith has demonstrated throughout the course of this litigation that he is able to articulate his claims and that although he may only have an elementary school education and limited knowledge of the law, these circumstances are not exceptional in the context of prisoner civil rights cases. (*Id.*) Smith timely filed an objection seeking reconsideration of Judge Baldwin's order.¹ (ECF No. 50 ("Objection").) As explained below, the Court overrules Smith's Objection and affirms Judge Baldwin's order.

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); see *also* Fed. R. Civ. P. 72(a); LR IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case

¹Defendants did not respond.

1 pursuant to LR IB 1-3, where it has been shown that the magistrate judge's ruling is
2 clearly erroneous or contrary to law."). "This subsection would also enable the court to
3 delegate some of the more administrative functions to a magistrate judge, such as . . .
4 assistance in the preparation of plans to achieve prompt disposition of cases in the
5 court." *Gomez v. United States*, 490 U.S. 858, 869 (1989). "A finding is clearly
6 erroneous when although there is evidence to support it, the reviewing body on the
7 entire evidence is left with the definite and firm conviction that a mistake has been
8 committed." *United States v. Ressay*, 593 F.3d 1095, 1118 (9th Cir. 2010) (quotation
9 omitted). A magistrate judge's pretrial order issued under 28 U.S.C. § 636(b)(1)(A) is
10 not subject to *de novo* review, and the reviewing court "may not simply substitute its
11 judgment for that of the deciding court." *Grimes v. City & County of San Francisco*, 951
12 F.2d 236, 241 (9th Cir. 1991).

13 The Court will overrule the Objection because Smith has not shown that Judge
14 Baldwin clearly erred or ruled contrary to law. As Judge Baldwin correctly noted, there is
15 no constitutional right to appointed counsel in a § 1983 action. See *Adir Int'l, LLC v.*
16 *Starr Indemnity and Liability Co.*, 994 F.3d 1032, 1038-39 (9th Cir. 2021) ("[T]his court
17 has long held that there is no constitutional right to counsel in a civil case." (internal
18 quotations and citation omitted)); see also *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th
19 Cir. 1997) ("There is no constitutional right to appointed counsel in a § 1983 action."),
20 *opinion reinstated in pertinent part*, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en banc). A
21 district court may request that an attorney represent an indigent civil litigant, see 28
22 U.S.C. § 1915(e)(1), but only when the case presents "exceptional circumstances,"
23 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding of exceptional
24 circumstances requires an evaluation of both the likelihood of success on the merits and
25 [the plaintiff's ability to] articulate his claims *pro se* in light of the complexity of the legal
26 issues involved." *Id.* (quoting *Wilborn*, 789 F.2d at 1331) (internal quotation marks
27 omitted).

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1 Smith does not argue that Judge Baldwin applied the wrong standard, but rather
2 that she should have found that exceptional circumstances exist here. Smith gives three
3 reasons why Judge Baldwin's Order should be reversed. First, Smith argues that the
4 facts show he is likely to succeed on the merits of the claim and, further, his chances of
5 success would improve if the Court requests counsel. (ECF No. 50 at 34.) Next, Smith
6 claims that Judge Baldwin failed to consider the added complexity of the amended
7 complaint. (*Id.* at 4-5.) Finally, Smith argues that although his past ability to litigate his
8 case may have been adequate, preparing for trial will require greater skills and flexibility
9 than he currently possesses. (ECF No. 50 at 6-7.)

10 The Court is not persuaded that any of these arguments demonstrate Judge
11 Baldwin clearly erred. First, although Smith may have shown that he is likely to succeed
12 on the merits, he must also demonstrate that his legal claims are sufficiently complex
13 and that he lacks the ability to pursue them. *See Terrell*, 935 F.2d at 1017. A likelihood
14 of success on the merits is not alone enough.

15 As to his second argument, the amended complaint also only asserts one claim
16 relating to one incident, though Smith added defendants and elaborated on the facts
17 supporting his claim. (ECF No. 34.) The Court agrees with Smith that the nature of the
18 allegations he in the amended complaint are serious; however, claims may be very
19 serious and still not overly complex. As explained in the Order and above, the Court's
20 inquiry is focused on whether Smith is able to articulate his claims. The Court agrees
21 with Judge Baldwin that Smith has demonstrated he is able to do so—his briefing is
22 clear, organized, and supported by relevant caselaw and facts, and he has managed to
23 pursue his claim diligently. Even assuming that Judge Baldwin only considered the
24 original complaint, the Court finds that the amended complaint does not state claims
25 that are too complex for Smith to continue without counsel.

26 Finally, though the Court agrees with Smith that trial is likely to present different
27 challenges than pre-trial litigation, it is not apparent that he will be unable to manage
28 pursuing his case *pro se*. While almost every *pro se* litigant would benefit from the

1 assistance of a competent attorney, the Court must find that the circumstances are
2 exceptional before requesting pro bono counsel. *See Rand*, 113 F.3d at 1525. The
3 demands of trial that Smith references—coordinating and preparing witnesses,
4 choosing trial strategy, and presenting claims clearly to a jury—are tasks that every *pro*
5 se litigator who goes to trial must deal with. Because the Court agrees with Judge
6 Baldwin that Smith’s circumstances are not “exceptional,” the Court finds that Judge
7 Baldwin’s decision is not clearly erroneous or contrary to law.

8 It is therefore ordered that Smith’s objection (ECF No. 50) to Judge Baldwin’s
9 March 14, 2022, order is overruled.

10 DATED THIS 5th Day of April 2022.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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